

REMARKS

In the Office Action of December 17, 2003, claims 1, 2, 4, 6, 8-10 and 12-20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Ross et al. (U.S. Patent No. 5,318,543).

Claims 1, 2, 9-12 and 19-21 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kalinski (U.S. Patent No. 5,311,990).

Claims 3 and 17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Ross or Kalinski.

Claims 1-4, 6 and 8-21 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of co-pending application no. 10/085,417; and claims 1-26 of co-pending application no. 10/085,637; and over claims 1-21 of co-pending application no. 10/085,639.

Claims 5 and 7 were objected to as being dependent upon a rejected base claim, but otherwise allowable if rewritten to include all of the limitations of the base claim and any intervening claims. In the present Amendment, Applicants have amended claims 5 and 7 so that they are each independent claims that incorporate the claims from which they depend. As such, Applicants respectfully submit that claims 5 and 7 are in condition for allowance.

Applicants respectfully submit that claim 1 defines over Kalinski. Respectfully, Kalinski does not disclose a kit having a container that is adapted to be reclosable, the container having a lid and a base that define an interior space when the container is in the closed position in which at least one

accessory article is retained in the interior space. Support for this claim amendment may be found in at least Figs. 3-6 of the drawings, and at least on page 8, lines 10-23 of Applicants' application.

Kalinski discloses a blister package 20 that has an intermediate tray 55 that may be placed onto a bottom tray 80. Objects located in the bottom tray 80 may be covered by the intermediate tray 55, and in turn objects located on the intermediate tray 55 may be covered by a cover 25. The intermediate tray 55 has a base 60 and a continuous wall 65, the base 60 defining cavities 62 into which objects may be held (see Kalinski at column 3, lines 10-18).

Claim 1 of Applicants' application calls for a container that is adapted to be reclosable and has a lid and a base that define an interior space when the container is in the closed position and where at least one accessory article is retained in the interior space. The intermediate tray 55 of Kalinski is not reclosable. The intermediate tray 55 has no mechanism or feature which could reasonably be considered to be either opened or closed. Further, the base 60 and the continuous wall 65 do not define an interior space. The container of claim 1 of Applicants' application is a completely different structure than the intermediate tray 55 of Kalinski, and Applicants respectfully submit that claim 1 defines over this reference.

Referring now to Ross, this reference discloses a laparoscopic jejunostomy instrumentation kit that has a T-fastener set comprising a slotted needle 18, stylet 18A, and five T-fastener assemblies 19 packaged in a seal pouch 20 (see Ross at column 2, lines 63-65). The slotted needle 18, stylet 18A,

and T-fastener assemblies 19 are used in creating a hole through the abdominal wall 50 and drawing the jejunal wall 55 upwards into close proximity to the abdominal wall 50 (see Figs. 6-9 of Ross and column 4, line 67 to column 5 line 29). Applicants' application defines "accessory" surgical items as items that encompass generally loose ancillary articles such as sutures, swabs, ointment packages, lubricant packages, drapes, gauze pads, small vials or packages of drugs, and the like (see page 3, lines 11-16 of Applicants' application).

Applicants' application also defines surgical "articles" as devices used in performing a particular surgical procedure, for instance scissors, clamps, forceps, drugs, syringes, needles, tubes, scalpels, snares, cannulas, and the like (see page 3, lines 4-10 of Applicants' application). The slotted needle 18, stylet 18A, and T-fastener assemblies 19 of Ross are surgical "articles" as defined in Applicants' application. These items are not "accessory" items as defined in Applicants' application.

Ross does disclose "accessory" articles, those being optional components such as a sterile drape, swabs, a packet of cotton gauze squares 21 and the like (see Ross at column 2, lines 40-43). Ross specifically discloses these "accessory" items being placed into a first recess in the tray 13 (see Ross at column 2, lines 40-43; and Figs. 2 and 3).

Claim 1 calls for at least one accessory article to be retained in an interior space of the container. As stated, the slotted needle 18, stylet 18A, and T-fastener assemblies 19 in Ross are not "accessory" articles, but are instead surgical "articles." As such, the seal pouch 20 in Ross does not retain any

“accessory” articles but instead retains only surgical “articles.” Ross does disclose “accessory” articles, but these are placed loosely in a first recess in the tray 13, and are not retained in an interior space of a container.

Additionally, claim 1 of Applicants’ application calls for the container to have a lid and a base and to be reclosable. The sealed pouch 20 of Ross does not have a base or a lid, and is not disclosed as being resealable.

Further, it would not have been obvious for one skilled in the art to reconfigure Ross so that the “accessory” articles such as the sterile drape, swabs and the packet of cotton gauze squares 21 are retained in the sealed pouch 20. Doing so would necessarily cause the sealed pouch 20 to be increased in size in order to accommodate the holding of one or more “accessory” articles. Ross is specifically directed towards a kit that reduces the amount of packaging material that is created within the sterile environment of the operating room and which later must be discarded (see Ross at column 1, lines 42-45; and column 1, lines 56-59). As such, placing the “accessory” articles into the sealed pouch 20 would go completely against the explicit teaching of Ross, and therefore such a modification would not have been obvious to one skilled in the art.

Applicants respectfully submit that claim 1 defines over both Ross and Kalinski and is in condition for allowance. Further, all claims that depend from claim 1 (claims 2-4, 6 and 8-11) are also in condition for allowance. Their rejections being made moot due to the allowance of claim 1.

Applicants respectfully traverse the § 102(b) rejection to claim 12 in view of Ross. Referring to Ross, this reference discloses **at most** two planar surfaces with recesses disposed therein. As can be readily seen in Fig. 3 of Ross, the tray 13 has a first planar surface with various recesses defined therein to house various surgical articles, such as surgical articles 15, 23, 16 and so forth. A recess is also provided to house a sealed pouch 20. The sealed pouch 20 rests on a second planar surface in which recesses are defined to house syringes 17 and 27. However, there are no additional planar surfaces in the tray vertically offset from the planar surfaces just described in which additional recesses are defined for retaining additional surgical articles. The lip around the tray 13 cannot reasonably be considered as a planar surface having a recess defined therein for receipt of at least one article. Accordingly, Applicants respectfully submit that claim 1 defines over Ross.

Respectfully, Applicants also traverse the § 102(b) rejection of claim 12 in view of Kalinski. Referring to Figs. 1 and 5 of Kalinski, it can be readily seen that the bottom tray 80 includes a lip 101. A ridge 95 is disposed below the lip 101 and supports the intermediate tray 55 as particularly seen in Fig. 5. However, the surface 101 is not a planar surface having a recess disposed therein that contains at least one article. The intermediate tray 55 is not a surgical article resting in a recess shaped for the particular surgical article. Similarly, the surface defined by the circumferential ridge 95 is not a planar surface having a surgical article recess defined therein, but simply defines a surface upon which the intermediate tray 55 rests. The only surface in the tray of Kalinski that has a

surgical article recessed defined therein is the surface 85 noted in the Office Action of December 17, 2003. Accordingly, Applicants respectfully submit that claim 12 defines over Kalinski.

As such, Applicants respectfully submit that claim 12 defines over both Ross and Kalinski and is in condition for allowance. Further, all claims that depend from claim 12 (claims 13-21) are also in condition for allowance. Their rejections being made moot due to the allowance of claim 12.

A properly executed Terminal Disclaimer is being filed herewith to overcome the various double-patenting rejections noted in paragraphs 6 and 7 of the Office Action of December 17, 2003. It is to be understood that the Terminal Disclaimer is submitted merely to expedite prosecution of the present application, and in no way should be taken as acquiescence in the Office Actions position that a Terminal Disclaimer is required, or that the claims of the present application are obvious in view of the co-pending related applications alone or in combination with any other reference.

Applicants respectfully submit that all pending claims are allowable and that the application is in condition for allowance. Favorable action thereon is respectfully requested. The Examiner is encouraged to contact the undersigned at the Examiner's convenience to resolve any remaining issues.

Respectfully submitted,

DORITY & MANNING,
ATTORNEYS AT LAW, P.A.

Neal P. Pierotti

Neal P. Pierotti
Reg. No. 45,716

P.O. Box 1449
Greenville, SC 29602-1449
Telephone: (864) 271-1592
Facsimile: (864) 233-7342

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